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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

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Plaintiff,

No. CR 10-0455 WHA

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v.

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MARCEL KING,

**FINDINGS OF FACT ON
FORM 12 VIOLATION**

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Defendant.

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Despite the lengthy evidentiary proceedings with four witnesses, extensive briefing, and oral argument on this supervised release violation, the Court's findings and conclusions can be succinctly stated, namely that the Court **FINDS** that offender Marcel King committed statutory rape upon the fifteen-year old victim, as charged in the Form 12. It is true that the victim has serious credibility problems and that we have only her word for the sex part but the trier of fact is nevertheless permitted to believe part, if not all, of her story. The Court does believe the most consistent core of her story — that she had "consensual" intercourse with King, and so finds.

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In making this finding, the Court has relied to a limited degree on the testimony of Dr. Laurie Richer and particularly on her own professional experience with genuine rape victims and their tendency toward inconsistent stories. Objections to this aspect of her testimony are **OVERRULED**. That part of her testimony is well anchored in her own professional experience.

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United States District Court

For the Northern District of California

1 The Court, having seen the victim, further **FINDS** that King could not have reasonably
2 believed the victim was eighteen years of age or older. Therefore, "consent" was legally
3 impossible as a matter of law. The standard of proof is preponderance of the evidence and this
4 standard has been applied and met.

5 The trier of fact is not required to lay out a factual analysis. It is enough to make a
6 finding. Nevertheless, the Court **ADOPTS** as true the government's Proposed Findings Nos. 1, 2,
7 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 32, 37, 38 and 40.
8 The omission of other proposed government findings does not necessarily mean that they were
9 rejected. It is simply unnecessary to reach them. This order further **FINDS** that King gave the
10 victim his phone number that night and afterward they called each other using that number.
11 The Court has not relied on King's prior arrest record or his criminal history for that matter.

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IT IS SO ORDERED.

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Dated: December 14, 2016.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE